

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 733
Judiciary

(Delegate Dwyer)

Drunk Driving - State Officials - Mandatory Minimum Sentence

This bill establishes mandatory penalties and other conditions to be imposed on a State official who is convicted of (1) driving under the influence of alcohol; (2) driving under the influence of alcohol *per se*; (3) driving while impaired by alcohol; or (4) transporting a minor while committing any of the aforementioned offenses.

A State official who is convicted of any of these offenses is subject to a mandatory minimum penalty of imprisonment for 60 days or 30 weekends. In addition, a court must order the State official to (1) successfully complete an inpatient alcohol rehabilitation program of 28 days duration either approved by the court or certified by the Department of Health and Mental Hygiene (DHMH); (2) successfully complete an outpatient alcohol rehabilitation program of 28 weeks duration that is either court-approved or certified by DHMH; and (3) successfully complete participation in the Ignition Interlock System Program (IISP) for 18 months. Furthermore, for three years the bill prohibits the State official from entering an establishment that serves alcohol or attending a political event, reception, or fundraiser where alcohol is served. Also, the State official must complete three years of supervised probation.

Fiscal Summary

State Effect: The bill's establishment of mandatory penalties for State officials is not expected to have a material impact on State operations or finances. Enforcement can be handled with existing resources.

Local Effect: The bill's establishment of mandatory penalties for State officials is not expected to have a material impact on local operations or finances. Enforcement can be handled with existing resources.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: The bill defines “State official” to mean the Governor, Lieutenant Governor, a constitutional officer of an Executive Branch unit, a member of the General Assembly, a judge, a State’s Attorney, or a sheriff.

Notwithstanding other provisions to the contrary, the sentencing court may not impose less than the mandatory sentence required by the bill or suspend the mandatory sentence.

Current Law: A person may not drive or attempt to drive any vehicle while:

- under the influence of alcohol or under the influence of alcohol *per se*; or
- impaired by alcohol.

A person who drives or attempts to drive a vehicle while under the influence of alcohol or under the influence of alcohol *per se* is subject to the following maximum penalties:

- for a first offense, a fine of up to \$1,000 and/or imprisonment for up to one year;
- for a second offense, a fine of up to \$2,000 and/or imprisonment for up to two years; and
- for a third or subsequent offense, a fine of up to \$3,000 and/or imprisonment for up to three years.

For purposes of determining these second or subsequent offender penalties, any prior conviction for driving while impaired by or under the influence of drugs or alcohol may count as a prior conviction if it occurs within five years of the subsequent violation.

A person convicted of driving while under the influence of alcohol, or under the influence of alcohol *per se*, while transporting a minor is subject to (1) for a first offense, maximum penalties of a fine of \$2,000 and/or two years imprisonment; (2) for a second offense, maximum penalties of a fine of \$3,000 and/or three years imprisonment; or (3) for a third or subsequent offense, maximum penalties of a fine of \$4,000 and/or four years imprisonment.

A person who drives a vehicle while impaired by alcohol is subject to the following penalties:

- for a first offense, a fine of up to \$500 and/or imprisonment for up to two months; and
- for a second or subsequent offense, a fine of up to \$500 and/or imprisonment for up to one year.

For purposes of determining these second or subsequent offender penalties, any prior conviction for driving while impaired by or under the influence of drugs or alcohol may count as a prior conviction. Also, for purposes of determining these second or subsequent offender penalties, a conviction in another state or federal jurisdiction that, if committed in Maryland, would constitute driving while impaired by alcohol or while impaired by a drug, a combination of drugs, or a combination of one or more drugs and alcohol is considered a prior conviction.

A person who transports a minor while impaired by alcohol is subject to the following penalties:

- for a first offense, a fine of up to \$1,000 and/or imprisonment for up to six months; and
- for a second offense or subsequent offense, a fine of up to \$2,000 and/or imprisonment for up to one year.

For purposes of determining these second or subsequent offender penalties, any prior conviction for driving while impaired by or under the influence of drugs or alcohol may count as a prior conviction. Also, for purposes of determining these second or subsequent offender penalties, a conviction in another state or federal jurisdiction that, if committed in Maryland, would constitute transportation of a minor while drunk or drugged is considered a prior conviction.

Mandatory Minimum Penalties: Subsequent convictions for driving under the influence, and under the influence *per se*, also carry mandatory minimum penalties. A person who is convicted of driving under the influence of alcohol or under the influence of alcohol *per se* twice within five years is subject to a mandatory minimum penalty of imprisonment for not less than five days. A person who is convicted of driving under the influence of alcohol or under the influence of alcohol *per se* three or more times within five years is subject to a mandatory minimum penalty of imprisonment for not less than 10 days.

These penalties are not subject to suspension or probation. The offenders are also required to undergo alcohol abuse assessments and potentially participate in certain alcohol abuse treatment programs.

For purposes of determining these second or subsequent offender penalties, a conviction in another state or federal jurisdiction that, if committed in Maryland, would constitute driving under the influence of alcohol, driving under the influence of alcohol *per se*, or driving while impaired by a controlled dangerous substance is considered a prior conviction.

Administrative Penalties: A conviction for driving under the influence of alcohol or under the influence of alcohol *per se* carries with it 12 points. The Motor Vehicle Administration (MVA) is required to revoke the license of an individual who accumulates 12 points within a two-year period. A revocation continues indefinitely until the driver applies for and is approved by MVA for reinstatement.

A conviction for driving while impaired by alcohol carries with it eight points. MVA is required to suspend the license of an individual who accumulates eight points within a two-year period. A suspension for an accumulation of points is for a specific period that may not exceed one year.

MVA possesses broad latitude to modify a suspension or revocation based on the assessment of points. MVA may modify a suspension and issue a restrictive license that limits the purposes for which the person may drive, *e.g.*, for work or education purposes.

MVA also is specifically authorized to modify a postconviction drunk driving license suspension or revocation for purposes of a person's participation in IISP. Under IISP, MVA may suspend a driver's license for the following periods of time: (1) for a first conviction, not more than 6 months; (2) for a second conviction at least five years after the date of the first conviction, not more than 9 months; (3) for a second conviction less than five years after the date of the first conviction, not more than 12 months; and (4) for a fourth or subsequent conviction, not more than 24 months.

Ignition System Interlock Program – Mandatory Program Participation: A driver must participate in IISP as a condition of modification of a license suspension or revocation of a license or the issuance of a restrictive license if the driver:

- is required to participate by a court order;
- is convicted of driving while under the influence of alcohol or under the influence of alcohol *per se* and had a blood alcohol concentration (BAC) at the time of testing of 0.15 or greater;
- is convicted of driving while under the influence of alcohol, under the influence of alcohol *per se*, or impaired by alcohol *and* within the preceding five years was convicted of any specified alcohol- and/or drug-related driving offense; or

- was younger than age 21 and violated the alcohol restriction imposed on the driver's license or committed the specified alcohol-related driving offense.

A driver who is required to participate in the program must be in the program for six months the first time the requirement is imposed. For the second time, the driver must participate for one year. For the third or any subsequent time the requirement is imposed, the driver must participate for three years. A court and MVA may also impose a longer participation period in accordance with other Maryland Vehicle Law provisions.

MVA must immediately issue a license to a driver who successfully completes the program and whose license is not otherwise suspended, revoked, refused, or canceled.

Sanctions for Program Participants: A driver who is convicted of driving while under the influence of alcohol or under the influence of alcohol *per se* and had a BAC of 0.15 or greater is subject to a mandatory indefinite license suspension until the driver successfully completes IISP. The other categories of drivers who are mandated to participate in the program (as noted above) are subject to mandatory license suspension for one year if they fail to participate in the program or do not complete it. Periods of mandatory participation must run concurrently for a driver who is subject to participation in the program due to more than one provision of the law.

A driver who is eligible to participate in the program after taking a test of blood or breath with a BAC result of at least 0.08 but less than 0.15 and who is otherwise ineligible for modification of a license suspension or issuance of a restrictive license under existing provisions, has to participate in the program for one year. If the driver does not participate, MVA must suspend the driver's license for the full suspension period otherwise required.

A driver who does not successfully complete the program and is subject to suspension may request a hearing. If the hearing is timely requested, the suspension must be stayed pending the decision at the administrative hearing.

Any driver who is mandated to participate in the program, or who requests ignition interlock program entry and is not otherwise exempt, must not drive a motor vehicle without an ignition interlock device in violation of an ignition interlock system restriction on the participant's driver's license. A person who violates this provision is guilty of a misdemeanor and is subject to maximum penalties of one year imprisonment and/or a \$1,000 fine for a first offense and two years imprisonment and/or a \$1,000 fine for a second or subsequent offense.

Reconsideration of Refusal or Program Reentry: If a driver who is eligible or required to participate in IISP does not initially become a participant, that driver may apply to MVA

to become a participant at a later time. MVA may reconsider any suspension or revocation of the driver's license arising out of the same circumstances and allow the driver to participate in the program.

If MVA removes a driver from the program due to violation of the program requirements, MVA may allow the driver to reenter the program after a period of 30 days from the date of removal. If the driver reenters the program under these circumstances, that driver must participate in the program for the entire period that was initially assigned for successful completion of the program without any credit for participation that occurred before the driver was removed from the program.

Mandatory Warnings: MVA is required to warn a driver, in a notice of proposed suspension or revocation, about the required participation in IISP if the driver is convicted of a subsequent alcohol-related driving offense. However, a driver may not raise the absence of a warning or the failure to receive a warning as a basis for limiting the authority of MVA to require participation in IISP.

Judicial Sanctions: In addition to any other penalties for driving while (1) under the influence of alcohol; (2) under the influence of alcohol *per se*; or (3) impaired by alcohol or in addition to any other condition of probation, a court may prohibit a person who is either convicted for any of these offenses, or granted probation before judgment, from operating a motor vehicle that is not equipped with an ignition interlock device for up to three years.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore, Carroll, Harford, Montgomery, and Queen Anne's counties; State Ethics Commission; Department of Health and Mental Hygiene; Judiciary (Administrative Office of the Courts); Department of State Police; State Prosecutor's Office; Department of Public Safety and Correctional Services; Maryland Department of Transportation; Department of Legislative Services

Fiscal Note History: First Reader - February 24, 2014
ncs/ljm

Analysis by: Karen D. Morgan

Direct Inquiries to:
(410) 946-5510
(301) 970-5510